

R E M A R K S

This Amendment is submitted in full response to the outstanding Office Action dated April 21, 2003, wherein claims 1, 4-8, and 10-24 stand rejected, and claims 2-3 and 9 were cancelled by way of a prior amendment. More specifically, claims 1, 4-8, 10, 13-15, 18-19, and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guggenheim (U.S. Patent No. 4,948,154) in view of Dismuke (U.S. Patent No. 5,195,778). In addition, claims 11-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guggenheim in view of Dismuke and Haberkorn (U.S. Patent No. 6,196,287). Finally, claims 16-17 and 20-21 stand rejected as being unpatentable over Guggenheim, as modified by Dismuke, in view of Franke (U.S. Patent No. 5,474,185).

The Applicant first wishes to address the Examiner's response to the previous amendment, and in particular, the Examiner's indication that the patent to Dismuke is analogous prior art. The Applicant notes with appreciation the Examiner's citation of *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992), in support of his position. As the Examiner has correctly indicated, in *Oetiker*, the Court stated that:

to rely upon a reference as a basis for rejection of the applicant's invention, **the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.** *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992) (**emphasis added**).

The Applicant notes that the Court further stated that:

[w]e have reminded ourselves and the PTO that it is

necessary to consider "the reality of the circumstances" . . . - in other words, common sense - in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor. *In re Oetiker*, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992).

In applying this "common sense" standard, the Federal Circuit held that:

[i]t has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected to look to fasteners for garments. The combination of elements from non-analogous sources . . . is insufficient to present a *prima facie* case of obviousness. Id.

Thus, the Federal Circuit in *Oetiker* ultimately decided that the references relied upon by the Examiner and the Board of Patent Appeals were improperly combined, even though both addressed the particular problem of mechanical fasteners, and consequently, the PTO's rejection of claims under section 103 was reversed.

As such, the Applicant respectfully submits that the Federal Circuit's decision in *Oetiker* actually supports the Applicant's position that *Dismuke* is non-analogous prior art. Specifically, in the present matter, the Examiner has stated that while *Dismuke* is intended for use in an automotive environment¹, "*Dismuke* remains appropriately analogous in that it is certainly pertinent to the problem being solved, namely the provision of pockets on a flexible

¹ Applicant submits that an automotive environment, known to be readily exposed to the elements, including various forms of dirt, dust, grease, grime, etc., is entirely opposite to a relatively sterile environment, and as such, is clearly not within "the field of the applicant's endeavor," as intended by *Oetiker*.

cover in order to store elements being employed by a user of the cover." (Office Action, page 5, paragraph 2, **emphasis added**). However, as stated in Dismuke, the essence of the invention is the combination of "a pouch to hold tools along with . . . a cloth covering to cover the cars finish." (Dismuke, column 1, lines 28-31). Furthermore, Dismuke states that "[i]t is an object of this invention to make the **accessibility of tools easier for mechanics** by having the tools placed in pockets of the car utility apron." (Dismuke, column 1, lines 33-36, **emphasis added**).

In stark contrast, the particular problem which the Applicant seeks to resolve with her invention relates more to *limiting accessibility to the contents of a cart so as to reduce exposure to the environment, and thereby, ensure that the contents are maintained in a sterile or substantially sterile state.* The Applicant directs the Examiner's attention to the present specification, in which the Applicant clearly indicates that it would be beneficial to develop a cover for a cart that:

could effectively isolate the contents of the cart and, as much as possible, to maintain a substantially sterile environment on the interior thereof. (Application, page 4, lines 11 through 14).

The Applicant's specification further provides that:

any such cover should enable a person to easily **access the contents of the cart, albeit in somewhat of a restricted manner**, so as to reduce exposure of the interior portions of the cart under the cover, as well as its contents to the surrounding environment. (Application, page 5, lines 5 through 9, **emphasis added**).

Thus, the Applicant submits that the particular problem which Dismuke addresses is the ready accessibility of tools to an auto mechanic, while concurrently protecting the finish of an automobile being serviced. This is wholly unrelated to the particular problem which the Applicant addresses in the present application, which is, to limit access to the contents of the cart and, as much as possible, to maintain a substantially sterile environment on the interior thereof.

As such, the Applicant respectfully submits that under the "common-sense" standard applied by the Federal Circuit in *Oetiker*, wherein the Court found the cited reference to be non-analogous even though it addressed a common problem of mechanical fasteners, the reference to Dismuke is clearly non-analogous in that it does not even imply the resolution of the particular problem addressed by the Applicant, i.e., to maintain a substantially sterile environment on the interior of a cart. Thus, the combination of Dismuke with any other reference is an improper combination of a non-analogous reference, and consequently, the PTO has not met its requisite burden of establishing a *prima facie* case of obviousness under Section 103 of the patent statute. Therefore, the Applicant urges that it is appropriate to withdraw the rejection of claims 1, 4-8, 10-15, 18-19, and 22-24 based on the cited references, with an indication of allowance given, instead.

It is recognized that in the outstanding Office Action the PTO has rejected certain of these other claims under Section 103 based on the cited combination of Guggenheim in view of Dismuke, along

with one or more other references, such as Haberkorn, Franke, etc. However, there is nothing in these other references which correct the deficiency noted above, and in particular, that the cited Dismuke patent is clearly, non-analogous art. As such, and despite these supplemental references, the Applicant repeats its contention that the PTO has not met its requisite burden under Section 103. In short, the underlying combination of primary references relied upon by PTO is defective, and for this reason, the supplemental references have not been addressed herein.

Second, the Applicant notes that the present specification discloses at least one embodiment of the present invention including a storage assembly having a "first pocket 50 . . . disposed within the hollow interior of the enclosure 12 so as to maintain specialized or predetermined garments or items in a completely isolated location, and therefore more thoroughly sterile environment, relative to the remainder of the interior of the enclosure 12 and particularly, in isolated relation to the cart 20 and the contents thereof." (Application, page 18, lines 1-7). As such, the Applicant presents herewith new independent claims 25-27, each reciting the further limitation of a compartment or a pocket, mounted within an interior portion of the cover, and being "structured to maintain at least one predetermined item in a sterile environment relative to the cart and the contents thereof."

Clearly, there is no teaching whatsoever in the cited Dismuke reference for providing a compartment or pocket on the interior of his device so as to restrict access thereto, but even assuming

arguendo that there were such a teaching, it would be directly counterintuitive to the particular problem which Dismuke set out to resolve, that is, "to make the **accessibility of tools easier for mechanics.**" Accordingly, and as previously noted by the Applicant, the combination of Dismuke and Guggenheim actually teaches away from Applicant's recited structure of a storage assembly including at least one interior compartment or pocket located within the hollow interior of an enclosure and being structured to facilitate the sterile environment of the contents of the first compartment by effectively isolating it from the remainder of the hollow interior of the enclosure as well as from the cart or other structure which it encloses.

Thus, the Applicant urges that newly presented independent claims 25-27 are neither anticipated nor rendered obvious by the cited references, and are believed to be in condition for immediate allowance.

Third and lastly, the Applicant has amended dependent claim 19, as originally presented, merely to resolve an informality contained therein.

Based on the above, the Applicant submits that the claims remaining in the present application, either as previously presented, currently amended, or as newly submitted, define certain structural features of a storage assembly which are not anticipated nor rendered obvious by any of the references of record, whether considered either singularly or in combination with one another. Based on the above amendments and remarks,